

<HTML><FONT BACK="#ffffff" style="BACKGROUND-COLOR: #ffffff" SIZE=2
PTSIZE=10>Subj: Re: [osa-strategy] Mtg 28 Aug, 10 am -- speak now
or...<FONT COLOR="#000000" BACK="#ffffff" style="BACKGROUND-COLOR:
#ffffff" SIZE=3 PTSIZE=10 FAMILY="SANSSERIF" FACE="Arial" LANG="0">

Date: 8/13/2001 10:56:07 AM Pacific Daylight Time

From: EllsbergD

To: osa-strategy@lyris.ombwatch.org

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Thanks for keeping me in touch. I'm in California (working to meet a November
15 deadline on my memoir) but this looks very serious; I'll try to make it back
for August 28. Do let me know any latest developments, especially if the
hearings are canceled. Would there be any merit in my trying to testify? Or
the contrary? Whatever's helpful.

I do think the point of view should be stressed that the First Amendment
so far has acted to preclude an Official Secrets Act just as it has effectively
precluded prior restraint; and that both of these must continue to be barred in
America, not just prior restraint, for us to have the political benefits of free
speech, i.e. to remain and function as a democratic republic. Unauthorized
disclosures, disclosures unauthorized by Executive branch officials, are vital
to that--as I've been saying, they are the lifeblood of a republic--and we must
not reverse the intent and insight of the First Amendment by permitting them to
be criminalized.

All this is obvious to all of you, but it could be worthwhile my
presenting this point of view in testimony, as one of the only three people who
have faced prosecution for unauthorized disclosure to the public (the others
being my co-defendant Tony Russo, and Samuel Loring Morrison). If the laws

under which we were prosecuted had been intended by Congress to serve as an OSA, and if they had been found constitutional under that interpretation by the Supreme Court (neither of which is the case), there would be no need for a new OSA. And there would by now have been hundreds of prosecutions for leaks, instead of two. This new bill, if passed and signed, would be the FIRST piece of legislation clearly intended by Congress to criminalize unauthorized disclosures (other than for communications intelligence and nuclear restricted data) and on that basis, it would have a much higher chance of being found constitutional when tested on appeal (even though that would be wrong and dangerous, in the view of those authorities I trust). I would like to see the view strongly argued that the First Amendment is incompatible, and rightly so, not only with prior restraint but with a broad OSA. (The contrary view was indicated, unfortunately, by Alex Bickel in his argument before the Supreme Court on the Pentagon Papers, and supported by several of the Justices: i.e. the view that prior restraint, at least in this case, was not permitted by the First Amendment but that an Official Secrets Act, in effect, both existed in existing legislation and was properly applied to the source of these particular documents, i.e. me. That viewpoint needs to be openly condemned, by editorials and by testimony. Again: democracy requires many more, not fewer, unauthorized disclosures, and criminal sanctions must not be added to the inescapable administrative, career and social sanctions that keep officials, like tobacco company employees, silent about dangerous, deceptive and illegal policies of their organizations.

Aside from possible testimony, I would be happy to discuss this point of view, and my experience both as government official and as a prior defendant (and future one, if this law is signed) before any editorial board.

Yours, Dan Ellsberg</HTML>

Subj: **[osa-strategy] Re: meeting reminder**

Date: 8/27/2001 9:37:30 PM Eastern Daylight Time

From: mraskin@igc.org (Marcus Raskin)

Reply-to: patricem@ombwatch.org

To: osa-strategy@lyris.ombwatch.org (Official Secrets Act Strategy Discussion List)

I teach from 12 to 1:50 but I will try hard to be at the 10 o'clock meeting if this is not thought by our colleagues to not being too disruptive. Again, to reiterate my position. We are entering very clippery slope territory when we talk about "compromise." It is far better to wage an all out campaign then to get caught in backroom negotiating. I believe there is sufficient support to stop the Shelby incursion in the media and among the citizenry at large. I fully support Ellsberg's position and Halperin's first line which is complete disaffiliation from the compromise exercise. Raskin
At 12:15 PM 8/23/01 -0400, you wrote:

>Yes – there is a meeting on Tuesday, 28 August, at 10 am at 2040 S

>Street NW (corner of CT, S, and FL).

>

>PLEASE if you are telling new folks about this meeting, let me know.

>I just got a call from a John Prados(?) about attending. I do not

>know him & had to probe to find out who he is, how he found out about

>the meeting (he said Dan E, Kate, Steve A, ...).

>

>Patrice

>

>—

>You are currently subscribed to osa-strategy as: mraskin@igc.org

>To unsubscribe send a blank email to

leave-osa-strategy-53328N@lyris.ombwatch.org

>

Marcus Raskin

Institute for Policy Studies

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Washington, DC 20005

(202) 234-9382 ext. 247

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